

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN HENRY McMURRY,

Plaintiff,

v.

Case No. 1:10-CV-1206

PATRICIA CARUSO, et al.,

HON. GORDON J. QUIST

Defendants.

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

Plaintiff has filed Objections to the magistrate judge's report and recommendation dated May 25, 2011, in which Magistrate Judge Carmody recommended that Plaintiff's emergency motion for a preliminary injunction be denied. In his motion, Plaintiff seeks an order directing Defendants to refrain from engaging in any retaliatory conduct; to provide him with a reflux-diet; and not to transfer him to any facility lacking the necessary program to provide Plaintiff a reflux-diet. In support of her recommendation, the magistrate judge found that Plaintiff failed to show that: (1) it is likely he will be subjected to unlawful retaliation; (2) he actually requires a reflux-diet that does not include soy, peppers, peanut butter, tomato products, citrus products, or spicy foods; and (3) the public interest is served by ordering the MDOC to incarcerate Plaintiff in a particular facility.

After conducting a *de novo* review of the report and recommendation and having considered Plaintiff's Objections and attached exhibits, the Court concludes that the report and recommendation should be adopted and Plaintiff's motion should be denied.

First, regarding Plaintiff's allegations of retaliatory conduct, Plaintiff alleges that his past transfers to facilities that were not able to comply with his reflux-diet detail were retaliatory, without any factual support that such transfers were in fact motivated by retaliation. Plaintiff simply alleges in a conclusory manner that the transfers were retaliatory. In spite of his Objections, Plaintiff has still not shown that he is likely to be subjected to unlawful retaliation.

Second, regarding Plaintiff's reflux-diet, while Plaintiff is correct that medical providers have issued Plaintiff a reflux-diet accommodation in the past, other medical personnel have indicated that Plaintiff does not require a reflux-diet accommodation because Plaintiff can eat from the regular menu. The magistrate judge thus correctly determined that Plaintiff has failed to show that such a diet is medically necessary.

Finally, because Plaintiff has failed to show that incarceration at a particular facility is necessary to ensure his safety, his request that the Court order the MDOC to transfer him to a particular facility would not serve the public interest. Plaintiff has thus failed to carry his heavy burden of demonstrating the need for injunctive relief. *See Jennings v. Wickstrom*, No. 2:05-CV112, 2007 WL 2433983, at 2 (W.D. Mich. Aug. 22, 2007).

Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued May 25, 2011 (docket no.23) is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff's Emergency Motion For Preliminary Injunction (docket no. 11) is **DENIED**.

Dated: July 25, 2011

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE